IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII Rule 32(2) (b)
Description of the case.

Civil Writ Petition No. 27 of 2003 (S/S)

Vinay Kumar ……. Petitioner

Versus

State & others ……. Respondents

Date of decision: 04th October, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (**Yes**)

- Whether the reporters be allowed to see the judgment? (**Yes**)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 27 of 2003 (S/S)

Vinay Kumar ……. Petitioner

Versus

State & others ……. Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by
Mr. Gopal K.Verma, Advocate of the petitioner.
Mr. N.C. Gupta, Standing Counsel for respondents.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought his regularization on the post of Sweeper.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner joined the service in the year 1989, as a Sweeper in the office of the respondent No. 4 (Executive Engineer, Irrigation Division, Kashipur) and regularly working since than. By order dated 01.11.1999 (copy Annexure- 1 to the writ petition) passed by respondent No. 2, service of Sweeper of the Divisional Office were kept under the control of the Assistant Engineer Ist, Irrigation Division, Kashipur. The Superintending Engineer (respondent No. 3) wrote a letter on 18.02.2001 (copy Annexure- 2 to the writ petition) to the respondent No. 4 whereby request was made for creation of posts of two full time Sweepers. In pursuance thereof on next date i.e. 19.02.2001, respondent No. 4 wrote a letter (copy Annexure- 3 to the writ petition) to higher authorities in which it was mentioned that petitioner Vinay Kumar and one other woman Rajo Devi are working in the office as Sweepers on payment of Rs. 75/- per month, who alleged themselves to be

working for last 12 years and complained of their dark future, as such till the two posts of Sweepers are created, at least permission to pay Rs. 500/- to each of them be given in lieu of the work done by them. From the Chief Engineer's office vide letter dated 13.09.2001 (copy Annexure- 4 to the writ petition) request was made to the Government for creation of two posts of the Sweepers. Meanwhile, again a reminder dated 21.07.2001 (copy Annexure- 5 to the writ petition) was sent by the Executive Engineer, Irrigation Division, Kashipur (respondent No. 4) to the higher authorities for creation of two posts of Sweepers, and respondent No. 3 also wrote letter (copy Annexure- 6 to the writ petition) in the month of August 2001 making the same request to the concerned authorities. Respondent No. 4 vide his order dated 23.09.2002 (copy Annexure- 7 to the writ petition) passed an order that the salary of three employees including the petitioner (who has been shown to be a part time Sweeper), shall be drawn from the office of Assistant Engineer- IV, Irrigation Division, Kashipur in future. It is alleged in the writ petition that the petitioner made several representations for regularization of his services, to the respondent Nos. 1, 2, 3 and 4 but to no avail. Lastly, it is alleged that the petitioner has put in 14 years of service but justice has not been done to him regarding regularization of his services, hence the writ petition.

3) A counter affidavit has been filed on behalf of the respondents in which it has been stated that the petitioner is a part time Sweeper on a consolidated monthly payment of Rs. 75/- per month in the office of respondent No. 4, only since March 1998 and not from the year 1989 as alleged by the petitioner. It is further stated in the counter affidavit that earlier petitioner's father, Sri Babu was part time Sweeper and the petitioner entered into his shoes in the job. In support of the

fact stated in the counter affidavit, copies of bill register (annexures C.A. 1 and C.A. 2) have been filed in which the petitioner's name appears in the bill of March 1998 while in February 1998 name of Sri Babu is entered as part time Sweeper for payment of Rs. 75/- per month. However, respondents have not denied the correspondence as alleged by the petitioner for creation of two posts of the Sweepers in the office of the Executive Engineer. Lastly, it is stated in the counter affidavit that the petitioners work and conduct was not proper and he was warned many times for indiscipline, insubordination and unruly behavior in respect of which copy of complaint dated 27.11.2000 (Annexure- C.A. to the counter affidavit) has been filed.

4) With the rejoinder affidavit, copies of the endorsements of the payment made at the rate of Rs. 75/- per month issued by the Junior Engineer, has been filed regarding the payment made in the year 1989, 1990 and 1991 showing name of the petitioner. Annexure R.A. 3 to the rejoinder affidavit shows that vide order dated 01.06.2003, now the petitioner has been allowed fixed pay of Rs. 500/- per month instead of Rs. 75/- per month.

5) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit and annexures annexed thereto.

6) The short question for consideration before this Court is whether, the petitioner has wrongly been denied the regularization of his services as Sweeper in the office of the respondent No. 4?

7) During the pendency of the writ petition, an application along with affidavit has been filed before this Court

complaining that one Rampal is appointed vide order dated 04.09.2004 as a regular Sweeper in the office of the respondent No. 4. However, no relief has been sought in this regard by way of amendment in the writ petition against Rampal nor he has been impleaded as a party.

8) Sri S.N. Babulkar, learned senior counsel on behalf of the petitioner relying on Article 14, 16, 21, 37, 39 (d) and 41 of the Constitution of India, referred to the principle of law laid down in Dharwad District P.W.D. Literate Daily Wages Employees Association and others V. State of Karnataka and others reported in AIR 1990 SUPREME COURT 884, and argued that 'equal pay for equal work' though not declared fundamental right but why of interpretation it is as good as a fundamental right which though cannot be enforced in a Court of Law but Central Government and State Government are expected to function like a model employer keeping the socio economic goals in mind. He further referred the principal of law laid down in State of Haryana V. Piara Singh reported in AIR 92 SC 2130 and submitted that where the services are of perennial nature, the employees whether ad hoc or casual labour should be considered for regularization of their services and he further submitted that sweeping is a job of permanent nature.

9) On the other hand, Sri Nanak Chand Gupta, learned Standing Counsel on behalf of the respondents argued that the petitioner is a part time Sweeper to whom it is open to work for others also and as such he has no right to be regularized. He further submitted that the petitioner was engaged only in the year 1998 and prior to it, his father was working as Sweeper. From the perusal of the annexures as mentioned earlier annexed with the affidavit, counter affidavit and rejoinder affidavit, this much is clear that the petitioner was engaged as a part time

Sweeper and not as a full time employee. As to the date of engagement, the petitioner alleges that he has worked since 1989 while the respondents state that he was engaged in 1998. The copies of the annexures annexed with the rejoinder affidavit as mentioned earlier clearly show that the petitioner was working as a part time Sweeper since 1989 and the stand taken by the respondents that he was engaged only in March 1998 does not appear to be correct. The respondents are in possession of the service record and they could have filed the copies of the bill register of 1989, 1990 and 1991 till 1997 to show if Vinay Kumar, petitioner's name was not entered into as a part time Sweeper. In the circumstances, this Court is more inclined to believe as stated by the petitioner in the writ petition that he is engaged since 1989. it is possible that in a particular month petitioner's father might also had worked for the department as it is not uncommon in the family of Sweepers that most of them are engaged for the same kind of work and they also perform at times duties for each other.

10) Now the question is whether a part time employee can seek regularization or not. Learned counsel for the petitioner drew attention of this Court to the principle of law laid down in State of West Bengal V. Pantha Chatterjee and others 2003 (5) Judgment Today S.C. 449 (at page 460) and it is contended that there should be no distinction in payment of salary between the part time and full time employees if the work assigned and working conditions are alike. In aforesaid Pantha Chatterjee case, part time Home Guards were doing same duties for same hours as that of full time Home Guards in the jungles with Border Security Force near Bangladesh border. But in the present case it cannot be said so. In the opinion of this Court in the present case, only on account of long service as part time

employee the petitioner deserves sympathetic consideration for regular appointment on the post of Sweeper.

11) On behalf of the petitioner my attention was also drawn to Gujarat Agricultural University V. Rathod Labhu Bechar and others; Judgment Today 2001 (2) SC 16 and State of U.P. Vs. Chandra Prakash Pandey and others; Judgment Today 2001 (4) SC 145 and it is submitted that the Apex Court in the cases where the workmen has done work for long years they have been ordered to be regularized. But none of these cases cover part time employees. As such the same are of no help to the petitioner. However, since the work of sweeping is of perennial nature and it is clear from record that respondent Nos. 2 to 4 themselves have wrote letters for creation of two posts of Sweepers, meaning thereby that there is requirement of services of two Sweepers as per the work load, it appears just and proper to direct the respondents to consider the name of petitioner also for regular appointment keeping in view the length of service he has rendered in the office of the respondents. (From the affidavit filed in the month of September 2004 by the petitioner, it appears that one of the post has already been filled by appointment of one Rampal.)

12) Therefore, in view of the above discussion and in the circumstances as above, the writ petition deserves and is disposed of with the direction to the respondents that they shall consider sympathetically petitioner's name for appointment to the post of Sweeper within a period of three months. No order as to costs.

(P.C. Pant, J.)

Dt.: October 4, 2004
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